

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PARNELL EDWARDS,

Plaintiff,

v.

HAROLD CLARKE *et al.* ,

Defendants.

Case No. C07-5563RBL/JKA

REPORT AND
RECOMMENDATION

**NOTED FOR:
February 15, 2008**

This proposed action has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and local Rules MJR 3 and 4. Plaintiff was granted *in forma pauperis* status (Dkt # 5). Plaintiff moved to amend his complaint and that motion was granted (Dkt # 7 and 8). On December 26, 2008, the amended complaint was received. The court has reviewed the amended complaint and now recommends this action be dismissed prior to service with the dismissal counting as a strike pursuant to U.S.C. § 1915 (g).

FACTS

Plaintiff alleges he was scheduled for release from the Intensive Management Unit at the

1 Clallam Bay Correction Center (Dkt # 9). Plaintiff states he feared for his life in general population
2 and told the Sargent in the IMU he was suicidal. Plaintiff was placed on Administrative Segregation in
3 the IMU and told he would be given an Intensive Management Security program (Dkt. # 9). On
4 August 15, 2007, plaintiff was assigned Intensive Management Status. He alleges he was told by a
5 Sargent he was on the list to be transferred to the Intensive Management Security program in unit F in
6 late August 2007. Plaintiff alleges he was later told someone had removed his name from the transfer
7 list.

8 Plaintiff alleges he has seen at least two inmates who were approved after he was sent to the
9 program in unit F. Plaintiff filed a grievance and was told the issue was not grievable. He has since
10 been told his name is on the list and he will be transferred when bed space becomes available.

11 Plaintiff files this action claiming denial of his Fourteenth Amendment due process rights and
12 his Eighth Amendment right to be free from cruel and unusual punishment. As a matter of law the
13 complaint fails to state a claim and must be dismissed.

14 DISCUSSION

15 Frivolous in forma pauperis complaints may be dismissed before service of process under 28
16 U.S.C. § 1915(e). Neitzke v. Williams, 490 U.S. 319, 324 (1989). A complaint is frivolous if "it lacks
17 an arguable basis in law or in fact." Id. at 325. Leave to amend is not necessary where it is clear that
18 the deficiencies in the complaint cannot be cured by amendment. Franklin v. Murphy, 745 F.2d 1221,
19 1228 n.9 (9th Cir. 1984).

20 Plaintiff's complaint should be dismissed as frivolous for the following reasons. An inmate has
21 no liberty interest in being placed in any specific prison or an any specific custody level. Olim v
22 Wakinekona, 461 U.S. 238 (1983); Meachum v. Fano, 427 U.S. 215 ; Montanye v. Haymes, 427 U.S.
23 236. As there is no liberty interest at stake, holding plaintiffs at a higher custody level does not violate
24 any right or duty owed him. Further, as long as the conditions of confinement do not violate the
25 Eighth Amendment in and of themselves, any argument that failure to transfer an inmate is an Eighth
26 Amendment violation trivializes the protections of the amendment.

27 This complaint fails to state a claim and amendment will not cure the defects. The action

1 should be dismissed with the dismissal counting as a strike pursuant to 28 U.S.C. 1915.

2 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
3 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R.
4 Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.
5 Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the
6 clerk is directed to set the matter for consideration on **February 15, 2008**, as noted in the caption.

7
8 DATED this 14 day of January, 2008.

9
10 /S/ J. Kelley Arnold
J. Kelley Arnold
United States Magistrate Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25